

Application No. 10/649,152  
Amendment Date: 12/14/05  
Response to Office Action of November 4, 2005

PATENT  
Docket Number: 1810US01-EE

### REMARKS

This is in response to the Office Action dated November 4, 2005. Claims 16, 43, 44 and 45 have been amended to call out that the underlay provides spring travel. Support for the claim amendment can be found on page 2 lines 30-36. Claims 16-18 and 20-45 are currently pending.

Applicant thanks the Examiner for granting continued examination, and withdrawing the objections to the information disclosure statements and the specification.

### Rejections Under 35 U.S.C. §103(a)

The Office Action rejected claims 16-18, 20-24, 26-28, 30, 33-34 and 42-45 under 35 U.S.C. §103 as unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Bottger et al. (US Patent No. 5,582,893). The Office Action also rejected claim 25 under 35 U.S.C. §103(a) as unpatentable over Hemphill in view of Bottger et al., and further in view of Failor (U.S. Patent No. 5,860,174A). Finally, the Office Action rejected claims 31, and 35-41 under 35 U.S.C. §103(a) as unpatentable over Hemphill in view of Bottger et al. Applicant respectfully traverses these rejections.

Applicant's invention is directed to a rescue underlay for a mattress where the underlay comprises a spacer woven fabric. Applicant's invention is designed to provide spring travel in addition to the mattress. Page two of the specification explains this and states, "[a]ccording to the invention the plastic flat material, which forms the rectangular underlay mat, is not simply a plastic woven fabric or plastic net material, but a flat material providing a spring travel. In other words, the underlay mat as such consists of a plastic material which itself has a certain cushioning function, because this material as such provide spring travel." Specification, page 2, lines 13-23. The specification goes on to state that "of particular significance, therefore, is a preferred embodiment of the rescue underlay according to the invention which is characterized in

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that the plastic flat material providing spring travel is a *spacer woven fabric*." Specification, page 2, lines 31-33 (emphasis added). Independent claims 16, and 43-45 have been amended to call out that the rescue underlay provides spring travel. Applicant has made these amendments solely to advance prosecution and not to acquiesce to the Office Action's rejections. The Office Action states that it would have been obvious to one of ordinary skill in the art of beds at the time of the invention to modify the device in Hemphill to use a flat material woven as taught by Bottger et al. In order to make a *prima facie* case of obviousness there must be (1) a suggestion or motivation in either the references or the knowledge generally available to a person of skill in the art; (2) a reasonable expectation of success; and (3) the references or combination must teach or suggest all of the claim limitations. MPEP §2143. The Office Action states that the motivation would have been to include a material having a relatively high tensile strength. Applicant respectfully disagrees. Applicant respectfully submits that there is not a motivation or suggestion, either in Hemphill or Bottger et al., or in the knowledge generally available to one of ordinary skill in the art of beds to combine the references together, nor is there a reasonable expectation of success.

The evacuation restraint in Hemphill is designed to resist soiling, minimize delays in the event of an emergency, provide easier handling, lower the cost of manufacturing, and simplify the packaging envelope. Hemphill, column 1, lines 30-52. Accordingly, Hemphill discusses the nature of the base sheet (1), the support member (2), and the envelope. Hemphill, column 2, lines 50-55 and Figures 5, 6, and 7 and the corresponding text. Hemphill does not describe or characterize either the base sheet (1) or support member (2) in terms of its tensile strength or spring travel nor does it state that a base sheet (1) or support member (2) that has a relatively high tensile strength or improved spring travel would work with the invention disclosed in

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Hemphill or would be desirable. On the contrary, Hemphill actually teaches away from a base sheet (1) or support member (2) that provides spring travel because it states that "the support member (2) provides a relatively rigid flat surface covered by a base sheet (1)." Hemphill, column 4, lines 24-27. A rigid flat surface is contradictory to the purpose of the present invention which is a rescue underlay that provides spring travel. See MPEP §2145. In addition to teaching away from the present invention, this same passage from Hemphill teaches away from a combination of Hemphill and Bottger et al. Hemphill calls out a rigid flat surface and Bottger et al. calls out a spacing fabric. It is improper to combine references where the references teach away from the combination. See MPEP §2145.

Bottger et al. does not remedy the shortcomings of Hemphill. Bottger et al. is directed to a spacing fabric for use in reinforcing structural components such as metallic plates, or containers such as tanks. Bottger et al., column 2, lines 20-35. The fabric in Bottger et al. is designed to be flat for a period of time and then expand upon heating to form two layers spaced apart. Id. Bottger et al. does not teach or suggest that the spacing fabric can be used with rescue mats such as those described in Hemphill, or in the present invention. Further, the spacing fabric described in Bottger et al., i.e., a spacing fabric that starts out as two layers that touch and expands upon heating to two layers spaced apart, would not be desirable or appropriate in the present invention where the purpose is to rescue people in an emergency and the layers preferably come spaced apart versus expanding upon heating.

Applicant respectfully submits that the motivation to combine Hemphill with Bottger et al. would not come from a person having ordinary skill in the art of making beds. Bottger et al. is not analogous prior art. A person of ordinary skill in the art of making beds would not look to the construction arts or to methods of reinforcement in construction in order to find materials that

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would be useful for rescue mats. In order to rely on a reference as a basis for a rejection, the reference must be in applicant's field of endeavor or reasonably pertinent. MPEP §2141.01(a).

This is not the case with Bottger et al. This is further exemplified by the fact that neither Hemphill nor Bottger et al. include a reference or teaching to the other, making it even less likely that the motivation would have come from a person skilled in the art of making beds.

Applicant submits that there is not a reasonable likelihood of success that the reinforcement fabric of Bottger et al. could be combined with the invention in Hemphill to create a rescue underlay for mattresses having spacer woven fabric. As discussed above, the spacer fabric in Bottger et al. starts out as two layers that touch and expand upon heating to form two layers spaced apart. Even if a person skilled in the art of making beds would look to Bottger et al. and the construction arts, a person skilled in the art could not reasonably expect the combination of Bottger et al. and Hemphill to succeed if the spacer fabric of Bottger et al. has to be heated to expand.

The shortcomings of Bottger et al. and Hemphill are not remedied by Faylor. Because the cited references do not include a motivation or teaching to combine them, do not include a reasonable likelihood of success, and use non-analogous art, Applicant believes the rejections under §103(a) should be withdrawn.

### Summary

For at least the reasons discussed above, it is respectfully submitted that each of the pending claims is in condition for allowance, and notification to that effect is kindly requested. The Examiner is invited to contact the Applicant's primary attorney-of-record, Anneliese Seifert, at (651) 795-5661, if it is believed that prosecution of this application may be assisted thereby.

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Respectfully submitted,

ECOLAB INC.  
Law Department  
Mail Stop ESC-F7  
655 Lone Oak Drive  
Eagan, Minnesota 55121  
Phone Number: (651) 795-5661  
Fax Number: (651) 204-7507

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By: Anneliese M. Seifert  
Name: Anneliese M. Seifert  
Reg. No. 54,434

